

**ENTERED**

December 23, 2024

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

ALFREDO ELIAS GOMEZ,

Petitioner,

VS.

BOBBY LUMPKIN,

Respondent.

§  
§  
§  
§  
§  
§  
§  
§  
§

Civil Case No. 7:24-CV-00025

**ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND RECOMMENDATION  
OF THE UNITED STATES MAGISTRATE JUDGE**

Pending before the Court is the December 2, 2024, Memorandum and Recommendation (“M&R”) prepared by Magistrate Judge Nadia S. Medrano. (Dkt. No. 7). Judge Medrano made findings and conclusions and recommended that Respondent’s Motion for Summary Judgment, (Dkt. No. 5), be **GRANTED** and that Petitioner’s petition for a writ of habeas corpus under 28 U.S.C. § 2254, (Dkt. No. 1), be **DISMISSED with prejudice** because the claims are time-barred from review under 28 U.S.C. § 2244(d). (Dkt. No. 7 at 1, 3–7). Judge Medrano further recommended that this Court **DECLINE** to issue a Certificate of Appealability because reasonable jurists would not debate the procedural bar of Petitioner’s habeas petition or question whether the Court correctly determined that the claims are time-barred from review. (*Id.* at 1, 6–7).

The Parties were provided proper notice and the opportunity to object to the M&R. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). On December 17, 2024, Petitioner filed two objections. (Dkt. No. 8). The first objection challenges the M&R’s determination that Petitioner’s claims are time-barred and ineligible for equitable tolling. (*Id.* at 1–2, 4).

Specifically, Petitioner contests the finding that declining to consider the underlying claims would not constitute a fundamental miscarriage of justice. (*Id.*). The second objection relates to the M&R's recommendation to deny a Certificate of Appealability and contends that reasonable jurists could debate both the procedural finding of time-barred claims and the determination that Petitioner failed to establish a valid constitutional claim. (*Id.* at 2).

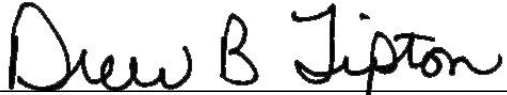
In accordance with 28 U.S.C. § 636(b)(1)(C), the Court is required to “make a de novo determination of those portions of the [magistrate judge’s] report or specified proposed findings or recommendations to which objection [has been] made.” After conducting this de novo review, the Court may “accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.*; see also Fed. R. Civ. P. 72(b)(3).

The Court has carefully considered de novo those portions of the M&R to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendations for plain error. Finding no error, the Court accepts the M&R and adopts it as the opinion of the Court. It is therefore ordered that:

- (1) Magistrate Judge Medrano’s M&R, (Dkt. No. 7), is **ACCEPTED** and **ADOPTED** in its entirety as the holding of the Court; and
- (2) Respondents’ Motion for Summary Judgment, (Dkt. No. 5), is **GRANTED**;
- (3) Petitioner’s petition for a writ of habeas corpus under 28 U.S.C. § 2254, (Dkt. No. 1), is **DISMISSED with prejudice**; and
- (4) the Court will **DECLINE** to issue a Certificate of Appealability in this matter.

It is SO ORDERED.

Signed on December 21, 2024.

  
DREW B. TIPTON  
UNITED STATES DISTRICT JUDGE